

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2937

Introduced by Assembly Member Solorio

February 22, 2008

~~An act to amend Section 594 of the Penal Code, relating to vandalism.~~
An act to amend Section 340.6 of the Code of Civil Procedure, and to amend Sections 4901, 4903, and 4904 of, and to add Sections 851.86 and 1203.95 to, the Penal Code, relating to wrongful convictions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2937, as amended, Solorio. ~~Vandalism. Wrongful convictions.~~

Under existing law, an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services is required to be commenced within one year after the plaintiff discovers or should have discovered the facts constituting the wrongful act or omission, or 4 years from the date of the wrongful act or omission, whichever occurs first.

This bill would specify that if the plaintiff is required to establish his or her actual innocence of an underlying criminal charge as an element of his or her claim, the action is required to be commenced within 2 years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case.

Existing law establishes procedures for a wrongfully convicted person to seek compensation against the state for the pecuniary injuries sustained by him or her through erroneous conviction and imprisonment. These procedures require the California Victim Compensation and Government Claims Board, if evidence shows the claimant sustained pecuniary injury through erroneous conviction and imprisonment, to

report the facts of the case and its conclusion to the next Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury, in a recommended amount of a sum equal to \$100 per day of incarceration.

This bill would increase that amount to \$50,000 for each year of prison confinement and to \$100,000 for each year on death row, adjusted on a pro rata basis for additional days and also adjusted to reflect the annual rate of inflation. The bill would extend the timeframe in which a person may bring a claim from 6 months to 2 years. The bill would also require the Department of Corrections and Rehabilitation, upon release of a wrongfully convicted person, to provide that person with release funds and to secure a case manager within 14 days, as specified, to assist in matters related to obtaining services, such as housing and medical care, for one year from the date of release. The bill would make related changes to other provisions.

Under existing law, whenever a person is acquitted of a charge and it appears to the judge that the defendant was factually innocent, the judge may order the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case, as specified.

This bill would require a judge, whenever a person is convicted of a charge and the conviction is set aside based upon a determination that the person was factually innocent, to order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court. By imposing new duties on local officials regarding the sealing of records, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law makes a person who maliciously commits any of specified destructive acts with respect to the real or personal property of another guilty of the crime of vandalism.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 340.6 of the Code of Civil Procedure is*
2 *amended to read:*

3 340.6. (a) An action against an attorney for a wrongful act or
4 omission, other than for actual fraud, arising in the performance
5 of professional services shall be commenced within one year after
6 the plaintiff discovers, or through the use of reasonable diligence
7 should have discovered, the facts constituting the wrongful act or
8 omission, or four years from the date of the wrongful act or
9 omission, whichever occurs first. *If the plaintiff is required to*
10 *establish his or her actual innocence for an underlying criminal*
11 *charge as an element of his or her claim, the action shall be*
12 *commenced within two years after the plaintiff achieves*
13 *postconviction exoneration in the form of a final judicial*
14 *disposition of the criminal case.* In no event shall the time for
15 commencement of legal action exceed four years except that the
16 period shall be tolled during the time that any of the following
17 exist:

- 18 (1) The plaintiff has not sustained actual injury;
19 (2) The attorney continues to represent the plaintiff regarding
20 the specific subject matter in which the alleged wrongful act or
21 omission occurred;
22 (3) The attorney willfully conceals the facts constituting the
23 wrongful act or omission when such facts are known to the
24 attorney, except that this subdivision shall toll only the four-year
25 limitation; and
26 (4) The plaintiff is under a legal or physical disability which
27 restricts the plaintiff's ability to commence legal action.

28 (b) In an action based upon an instrument in writing, the
29 effective date of which depends upon some act or event of the
30 future, the period of limitations provided for by this section shall
31 commence to run upon the occurrence of such act or event.

32 *SEC. 2. Section 851.86 is added to the Penal Code, to read:*

33 851.86. *Whenever a person is convicted of a charge, and the*
34 *conviction is set aside based upon a determination that the person*

1 was factually innocent of the charge, the judge shall order that
2 the records in the case be sealed, including any record of arrest
3 or detention, upon written or oral motion of any party in the case
4 or the court, and with notice to all parties to the case. If such an
5 order is made, the court shall give the defendant a copy of that
6 order and inform the defendant that he or she may thereafter state
7 he or she was not arrested for that charge and that he or she was
8 not convicted of that charge, and that he or she was found innocent
9 of that charge by the court. The court shall also inform the
10 defendant of the availability of indemnity for persons erroneously
11 convicted pursuant to Chapter 5 (commencing with Section 4900)
12 of Title 6 of Part 3, and the time limitations for presenting those
13 claims.

14 SEC. 3. Section 1203.95 is added to the Penal Code, to read:

15 1203.95. (a) As used in this section, a “wrongfully convicted
16 person” means an individual whose criminal conviction has been
17 vacated by a court, either on direct appeal or a petition for habeas
18 corpus, and the person has been released from custody as a result
19 of that court decision.

20 (b) Whenever a wrongfully convicted person serving a state
21 prison sentence has been released from custody as a result of a
22 court decision vacating his or her criminal conviction, the
23 Department of Corrections and Rehabilitation shall do both of the
24 following:

25 (1) Provide the wrongfully convicted person with release funds
26 pursuant to Section 2713.1.

27 (2) Secure a case manager for the wrongfully convicted person
28 within 14 days, unless the wrongfully convicted person declines
29 the assistance of a case manager. The case manager shall assist
30 the wrongfully convicted person for one year from the date of
31 release. The case manager shall not be a parole agent, probation
32 officer, or other law enforcement officer, and shall not be a staff
33 person of the Department of Corrections and Rehabilitation.

34 (c) The case manager for the wrongfully convicted person shall
35 do the following:

36 (1) Conduct a risk and needs assessment for the wrongfully
37 convicted person and his or her family.

38 (2) For one year, assist the wrongfully convicted person and
39 his or her family with securing needed services, including, but not

1 *limited to, housing, psychological counseling, medical services,*
2 *and vocational training.*

3 *(d) The Department of Corrections and Rehabilitation is*
4 *authorized to secure the case manager for the wrongfully convicted*
5 *person by entering into an agreement with a county social services*
6 *agency or a nonprofit community service provider.*

7 *SEC. 4. Section 4901 of the Penal Code is amended to read:*

8 4901. A claim under Section 4900, accompanied by a statement
9 of the facts constituting the claim, verified in the manner provided
10 for the verification of complaints in civil actions, must be presented
11 by the claimant to the California Victim Compensation and
12 Government Claims Board within a period of ~~six months~~ *two years*
13 after judgment of acquittal or discharge given, or after pardon
14 granted, or after release from imprisonment, ~~and at least four~~
15 ~~months prior to the next meeting of the Legislature~~ and no claim
16 not so presented shall be considered *by the* California Victim
17 Compensation and Government Claims Board.

18 *SEC. 5. Section 4903 of the Penal Code is amended to read:*

19 4903. On such hearing the claimant shall introduce evidence
20 in support of the claim, and the Attorney General may introduce
21 evidence in opposition thereto. The claimant must prove the facts
22 set forth in the statement constituting the claim, including the fact
23 that the crime with which he *or she* was charged was either not
24 committed at all, or, if committed, was not committed by him *or*
25 *her*, the fact that he *or she* did not, by any act or omission on his
26 *or her* part, ~~either intentionally or negligently, contribute to the~~
27 ~~bringing about of his arrest or conviction for the crime with which~~
28 ~~he was charged, through his or her own misconduct, voluntarily~~
29 ~~subvert the judicial process, and the pecuniary injury sustained by~~
30 ~~him or her through his or her erroneous conviction and~~
31 ~~imprisonment.~~

32 *SEC. 6. Section 4904 of the Penal Code is amended to read:*

33 4904. If the evidence shows that the crime with which the
34 claimant was charged was either not committed at all, or, if
35 committed, was not committed by the claimant, and that the
36 claimant did not, by any act or omission ~~either intentionally or~~
37 ~~negligently, contribute to the bringing about of his or her arrest or~~
38 ~~conviction, through his or her own misconduct, voluntarily subvert~~
39 ~~the judicial process, and that the claimant has sustained pecuniary~~
40 ~~injury through his or her erroneous conviction and imprisonment,~~

1 the California Victim Compensation and Government Claims
2 Board shall report the facts of the case and its conclusions to the
3 next Legislature, with a recommendation that an appropriation be
4 made by the Legislature for the purpose of indemnifying the
5 claimant for the pecuniary injury. The amount of the appropriation
6 recommended shall be a sum equivalent to ~~one hundred dollars~~
7 ~~(\$100) per day of incarceration~~ *fifty thousand dollars (\$50,000)*
8 *for each year of prison confinement, pro rata for additional days,*
9 *and one hundred thousand dollars (\$100,000) for each year on*
10 *death row, pro rata for additional days, served subsequent to the*
11 *claimant's conviction and that appropriation shall not be treated*
12 *as gross income to the recipient under the Revenue and Taxation*
13 *Code. These amounts shall be adjusted to reflect the annual rate*
14 *of inflation subsequent to enactment of this amendment.*

15 *SEC. 7. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*

20 ~~SECTION 1. Section 594 of the Penal Code is amended to~~
21 ~~read:~~

22 ~~594. (a) Every person who maliciously commits any of the~~
23 ~~following acts with respect to any real or personal property not his~~
24 ~~or her own, in cases other than those specified by state law, is~~
25 ~~guilty of vandalism:~~

26 ~~(1) Defaces with graffiti or other inscribed material.~~

27 ~~(2) Damages.~~

28 ~~(3) Destroys.~~

29 ~~Whenever a person violates this subdivision with respect to real~~
30 ~~property, vehicles, signs, fixtures, furnishings, or property~~
31 ~~belonging to any public entity, as defined by Section 811.2 of the~~
32 ~~Government Code, or the federal government, it shall be a~~
33 ~~permissive inference that the person did not own the property or~~
34 ~~have the permission of the owner to deface, damage, or destroy~~
35 ~~the property.~~

36 ~~(b) (1) If the amount of defacement, damage, or destruction is~~
37 ~~four hundred dollars (\$400) or more, vandalism is punishable by~~
38 ~~imprisonment in the state prison or in a county jail not exceeding~~
39 ~~one year, or by a fine of not more than ten thousand dollars~~
40 ~~(\$10,000), or if the amount of defacement, damage, or destruction~~

1 is ten thousand dollars (\$10,000) or more, by a fine of not more
2 than fifty thousand dollars (\$50,000), or by both that fine and
3 imprisonment.

4 (2) (A) If the amount of defacement, damage, or destruction is
5 less than four hundred dollars (\$400), vandalism is punishable by
6 imprisonment in a county jail not exceeding one year, or by a fine
7 of not more than one thousand dollars (\$1,000), or by both that
8 fine and imprisonment.

9 (B) If the amount of defacement, damage, or destruction is less
10 than four hundred dollars (\$400), and the defendant has been
11 previously convicted of vandalism or affixing graffiti or other
12 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,
13 or 640.7, vandalism is punishable by imprisonment in a county
14 jail for not more than one year, or by a fine of not more than five
15 thousand dollars (\$5,000), or by both that fine and imprisonment.

16 (c) Upon conviction of any person under this section for acts
17 of vandalism consisting of defacing property with graffiti or other
18 inscribed materials, the court may, in addition to any punishment
19 imposed under subdivision (b), order the defendant to clean up,
20 repair, or replace the damaged property himself or herself, or order
21 the defendant, and his or her parents or guardians if the defendant
22 is a minor, to keep the damaged property or another specified
23 property in the community free of graffiti for up to one year.
24 Participation of a parent or guardian is not required under this
25 subdivision if the court deems this participation to be detrimental
26 to the defendant, or if the parent or guardian is a single parent who
27 must care for young children.

28 (d) If a minor is personally unable to pay a fine imposed for
29 acts prohibited by this section, the parent of that minor shall be
30 liable for payment of the fine. A court may waive payment of the
31 fine, or any part thereof, by the parent upon a finding of good
32 cause.

33 (e) As used in this section, the term “graffiti or other inscribed
34 material” includes any unauthorized inscription, word, figure,
35 mark, or design, that is written, marked, etched, scratched, drawn,
36 or painted on real or personal property.

37 (f) The court may order any person ordered to perform
38 community service or graffiti removal pursuant to paragraph (1)
39 of subdivision (c) to undergo counseling.

- 1 ~~(g) This section shall become operative on January 1, 2002.~~

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